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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
CHEMITHON CORPORATION, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 78-150

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This is an appeal by the Chemithon Corporation from a civil penalty of \$250 (Notice of Civil Penalty No. 3881) imposed by the Puget Sound Air Pollution Control Agency based on Notice of Violation No. 15290, charging a visual emission on June 13, 1978 in violation of Section 9.03 of Regulation I. It came before the Pollution Control Hearings Board for a formal hearing on October 23, 1978 in Seattle, Washington, before all members of the Board (Dave Mooney, Chairman, Chris Smith and David Akana). David Akana presided.

Appellant was represented by its attorney, J. Richard Aramburu,

1 respondent was represented by its attorney, Keith D. McGoffin  
2 Susan Cookman, Olympia court reporter, recorded the proceeding.

3 Having heard the testimony, having examined the exhibits, and  
4 having considered the contentions and arguments of the parties, the  
5 Pollution Control Hearings Board makes these

## 6 FINDINGS OF FACT

### 7 I

8 The Chemithon Corporation, the appellant herein, designs and  
9 constructs detergent plants. It also makes detergent through a  
10 drying process in its plant located at 5430 West Marginal Way S W ,  
11 Seattle, Washington. To control and limit the amount of pollutants,  
12 appellant operates a wet scrubber system through which emissions  
13 pass before being discharged by a stack into the ambient air.

### 14 II

15 At about 3.00 p.m on June 13, 1978, an inspector on the respondent's  
16 staff witnessed a bluish-white plume emitting from the stack of  
17 the detergent spray dryer tower at appellant's plant at 5430 West  
18 Marginal Way S.W., Seattle, Washington. The inspector then went to  
19 the General Construction Company yard located south of appellant's  
20 property and visually observed the residual plume, at a point where the  
21 steam had dissipated, and found that for 21 of 24 minutes the opacity range  
22 from 30 percent to 50 percent. Shortly afterwards, as a result of the  
23 inspector's observation, the appellant was served by respondent with  
24 its Notice of Violation No. 15290, citing Section 9.03 of Regulation I.  
25 In connection therewith, respondent subsequently served on appellant  
26 its Notice of Civil Penalty No. 3881 in the sum of \$250 which is the

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 subject of this appeal.

2 III

3 Appellant's calculations indicate that under normal operating  
4 conditions the wet scrubber is less than 100 percent effective for  
5 removing oil and 100 percent effective for removing dust. The  
6 appellant has no monitor on the stack to determine content of the  
7 stack's emissions; consequently, its estimate of pollutant emissions is  
8 based upon calculations. These calculations show that the emission of  
9 oil into the atmosphere from appellant's stack is expected to be about  
10 0.006 grains per cubic foot of exhaust gas and about 0.1 lb/hr, this oil  
11 is mixed with water to form the plume. This emission would be well within  
12 the emission weight rate standard of Section 9.09 of Regulation I.

13 IV

14 Pursuant to RCW 43.21B.260, respondent has filed a certified copy  
15 of its Regulation I and amendments thereto, of which we take notice.

16 V

17 Any Conclusion of Law which should be deemed a Finding of Fact  
18 is hereby adopted as such.

19 From these Findings, the Pollution Control Hearings Board comes  
20 to these

21 CONCLUSIONS OF LAW

22 I

23 Appellant contends that the Notice of Violation No. 15290 is  
24 invalid because it is based on an emission observed by respondent's  
25 inspector in violation of the due process provisions of the Washington  
26 and the United States Constitutions. Appellant argues that the

1 respondent should have notified the appellant that a reading of the  
2 stack's emissions was about to take place, so that the appellant could  
3 take its own readings at the same time. Referring to Air Pollution  
4 Variance Board v. Western Alfalfa, 9 ERC 1236 (1976), cited by the  
5 appellant, we note that the Colorado Supreme Court states:

6 "Due process contemplates that notice should  
7 be given of a visual opacity reading by the  
8 Department of Health within a reasonably  
9 short period of time following the completion  
of the inspection." 9 ERC at 1240. (Emphasis  
supplied).

10 The respondent's investigator fulfilled that requirement by serving  
11 the Notice of Violation No. 15290 on the appellant immediately after  
12 conducting his observation. Chemithon Corp. v. Puget Sound Air  
13 Pollution Control Agency, 19 Wn. App. 687 (1978).

## 14 II

15 Contrary to the appellant's contentions, Section 3.05 of Regulation  
16 I does not require notice to the appellant that an investigation of an  
17 alleged violation, such as in the instant case, is about to occur. Section  
18 3.05 simply requires that if an inspector wants a sample of any material  
19 which affects or may affect the emission of air contaminants, the inspector  
20 must notify the owner of the time and place of obtaining the sample. An  
21 observation of an emission into the atmosphere is not the taking of such a  
22 sample.

## 23 III

24 Respondent, in a civil penalty case, has the burden of proving a  
25 prima facie case. Such was proven by the respondent through the testimony  
26 of its inspector, who testified as to the visual emissions. At that point,

1 the burden of going forward with the evidence shifted to the appellant.  
2 The appellant's calculations indicate that the wet scrubber is less than  
3 100 percent effective in oil removal under "normal" operating conditions.  
4 Therefore, the appellant has failed to carry its burden of proof that its  
5 stack released only uncombined water. If it had done so, the exclusion  
6 provision of Section 9.03(e) would have applied.

7 IV

8 This Board finds appellant in violation of Section 9.03 of  
9 respondent's Regulation I as cited in Notice of Violation No. 15290.

10 V

11 The Board, having heard no attack on the reasonableness of the  
12 penalty, finds the Notice of Civil Penalty No. 3881 to be reasonable.

3 VI

14 Any Finding of Fact which should be deemed a Conclusion of Law  
15 is hereby adopted as such.

16 Therefore, the Pollution Control Hearings Board issues this

17 ORDER

18 The \$250 civil penalty is affirmed.

19 DATED this 16<sup>th</sup> day of November, 1978.

20 POLLUTION CONTROL HEARINGS BOARD

21   
22 DAVE J. MOONEY, Chairman

23   
24 CHRIS SMITH, Member

25   
26 DAVID AKANA, Member

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER